



POLICE DEPARTMENT

May 20, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Brendan Cassidy
Tax Registry No. 921204
Police Service Area 1
Disciplinary Case No. 2012-8700

The above-named member of the Department appeared before the Court on February 27, 2014, charged with the following:

1. Said Sergeant Brendan Cassidy, while assigned to PSA 4, while off-duty, on or about April 6, 2012, at the premises [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Sergeant Cassidy wrongfully was involved in a physical dispute with Person A (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Sergeant Brendan Cassidy, while assigned to PSA 4, while off-duty, on or about April 6, 2012, at the premises [REDACTED], after being involved in an u[n]usual police occur[r]ence, failed and neglected to remain at the scene, as required.

P.G. 212-32, Page 1, Paragraph 1 – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

3. Said Sergeant Brendan Cassidy, while assigned to PSA 4, while off-duty, on or about May 8, 2012, at the premises [REDACTED], after being involved in an u[n]usual police occur[r]ence, failed and neglected to immediately notify the Operations Desk, as required.

P.G. 212-32, Page 1, Paragraph 2, Note – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

The Department was represented by Javier Seymore, Esq., Department Advocate's Office. Respondent was represented by John D'Alessandro, Esq.

Respondent pleaded Not Guilty to Specification Nos. 1 and 2. He pleaded Guilty to Specification No. 3 and testified in mitigation of the penalty. A stenographic transcript of the hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification Nos. 1 and 2. Having pleaded Guilty to Specification No. 3, he is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Detective Michelle Tege as a witness.

Detective Michelle Tege

Tege was assigned to the Housing Bureau Investigations Unit. She was assigned to investigate a domestic incident between Respondent and Person A, that took place on April 6, 2012. Person A made a 911 call to the [REDACTED] Police Department ([REDACTED] PD) [REDACTED] and requested that police respond to her residence. The [REDACTED] PD generated a domestic incident report (DIR) (see Department's Exhibit [DX] 1). Person A wrote that Respondent "came home drunk angry" because she had admitted to him that she had an [REDACTED] relationship. He then "took me into the bathroom" and urinated on her. He also "took the door off and had me taking off the hing[e]s." Respondent urinated on her again and

then left. Person A contacted her sister's husband, Person B, an auxiliary police officer [REDACTED]. When Respondent returned, he and Person A argued again. When Person B arrived, Respondent refused to allow him in, and Person B called 911. Respondent left once again (see DX 2, second DIR).

A New York City Police Department (NYPD) duty captain spoke to Person A at the time of the incident and Person A basically confirmed what she said in the DIR. On May 24, 2012, Tege conducted a more formalized, in-person interview of Person A (see DX 3, transcript). During Tege's interview, however, Person A "amended her statements." She said that Respondent was "not intoxicated but rather emotionally distraught." Person A confirmed that Respondent urinated on her, but said that it was not on purpose. Instead, "it was more like that of a toddler learning to use the bathroom and missing." The bathroom was not, she indicated, a large space. Respondent hit the door out of frustration, but it was "a total lie" that the door was removed from the hinges.

Tege testified that, according to the first DIR, Respondent was not at the scene when the [REDACTED] PD arrived at the residence. Person A confirmed during Tege's interview that Respondent knew she was planning to call 911.

Tege testified that she also interviewed Person B. On the night of the incident, Person A called Person B to her residence to try to calm the situation down. Person B told Tege that he felt Respondent was intoxicated. Person B said that he told Respondent he was going to call 911. At that point Respondent left. Person B also asserted that while he was inside the residence he observed his sister-in law cleaning up urine in the bathroom.

On cross examination, Tege agreed that during her interview of Person A "very clearly explained why the urination was accidental." Respondent was upset at learning of her

infidelity and returned even more despondent. When he returned, Person A wanted to talk to him about it, so she followed him into the bathroom. In the bathroom, Person A was “tugging at him” and “got in his personal space” while Respondent was urinating. This caused some urine to land on Person A’s pants cuff.

Tege conceded the investigation found that Person A told 911 she and Respondent had a dispute. Urination was not mentioned.

Tege asked Person A about the discrepancies between her statements in the DIRs and the statements in the formal interview. Person A acknowledged that she was upset and concerned about what was going to happen to her, Respondent [REDACTED] as a result of the statements she initially made.

On re-direct examination, Tege testified that 12 or more hours elapsed between the time of the incident and the time Respondent interacted with any type of law enforcement. She recalled that Person A said the incident began after dinner around 1830 hours and Respondent contacted the duty captain around 0800 or 0900 hours the following morning. A fitness-for-duty examination thus was not pertinent.

Respondent’s Case

Respondent testified on his own behalf.

Respondent

Respondent was a 16-year member of the Department and currently was assigned to patrol in Police Service Area 1. Respondent explained that on April 7, 2012, he went for a couple of drinks with his cousin after they had done some work on Respondent’s house. When

they returned, Person A told Respondent about the [REDACTED] relationship, a revelation that she had been leading up to. This made Respondent "pretty upset." Respondent walked into the bathroom and Person A followed. Person A began "pushing and pulling" on Respondent while they were in the bathroom. He told her that he did not wish to talk about it and wanted to be left alone. Person A told Respondent that he was "flipping out" and threatened to call 911. He felt, however, that there was no need for a 911 call because neither he nor Person A did anything that required police involvement. Respondent decided that because both he and Person A were "heated" it would be best if he left the house, so he did.

Respondent returned later that evening and Person A was still awake. They "had more words" and she informed him that she had contacted Person B. Respondent did not want to deal with Person B at that time, so he again decided to leave. He first went to his mother's house to tell her what was happening. He then went to a friend's house to "sleep it off over there, relax and cool down." On the way to his friend's house he stopped and "calmed down" behind a restaurant "for a bit." When he continued again towards his friend's house he encountered [REDACTED] PD officers. The officers informed him that Person A had called 911 and told Respondent that he needed to make the necessary "notifications and phone calls."

Respondent testified that "at some point" he called the Operations Unit but he did not know exactly when. He took a shower and went to the 50 Precinct (the designated command for investigating member-related incidents [REDACTED]) "as soon as possible" to meet with the duty captain. While there, he testified, he began experiencing chest pains and was taken in an ambulance to the hospital.

Respondent maintained that he did not urinate on Person A on purpose. He was not aware that urine splashed onto her until he read the reports the following day. Respondent spoke with

Person A about why she “made up those allegations” and she expressed concerns that her infidelity would cause Respondent to leave her and take her children. [REDACTED]

[REDACTED] Respondent believed that Person A made the allegations in an attempt to “gain some kind of leverage over” him.

Respondent indicated that when he returned [REDACTED] on approximately May 8, 2012, he went to his residence to see his children. Person A became confrontational when he arrived, however, so he walked away. He indicated that he wanted to file a complaint against her for this, so he went to his mother’s house and called 911. An OPD officer, who Respondent believed previously was with the NYPD as a sergeant, arrived and completed the DIR. The officer asked if Respondent had to notify the NYPD about the incident. Respondent answered him that he was “pretty sure” he did not have to make a notification because he was the complainant. Respondent acknowledged at trial that he was mistaken about the Patrol Guide procedure, although that was his understanding at the time. He now was aware that he was required to make a notification even when he was the complainant.

Respondent stated that he and Person A [REDACTED]. He indicated that he had primary custody of the three minor children.

On cross examination, Respondent denied making physical contact with Person A during the incident. He clarified that while he was attempting to urinate, Person A was “crowding” his space and saying, “Look at me, look at me.” Respondent testified he did not notice that urine had gotten on Person A and Person A did not make any allegations to Respondent about him urinating on her. As Respondent was leaving to go to his friend’s house, Person A said, “Oh,

yeah, what if I called 911 on you?" Respondent asserted that he did not believe she actually was going to call 911. Person A never called or needed to call 911 on Respondent in the past.

After Respondent returned to his house, Person B arrived. They did not speak. Respondent explained that Person B tended to blow things out of proportion and could go from being calm to "red" with "no in between." That was why Respondent left when Person B arrived.

Respondent testified that contrary to the DIR, there was no second bathroom incident.

After Respondent read the DIRs, he confronted Person A about her statements. This was before he left for the [REDACTED]. Respondent denied discussing with Person A the possibility of an interview by investigators or coaching her in preparation for an interview.

On re-direct examination, Respondent explained that prior to making her initial allegations Person A was unaware of how the Department treated these types of incidents.

Respondent said that he was not "physically afraid" of Person B. He felt it was best to leave when Person B arrived because Person B would try to "twist and turn things" to Person A's benefit.

FINDINGS AND ANALYSIS

The instant case arose from a domestic dispute between Respondent and Person A that took place on April 6, 2012, at their residence [REDACTED]. Because Person A refused to appear at the hearing, the Advocate relied on two domestic incident reports, in which she gave her version of the incident at the time it occurred. Person A alleged that she and Respondent argued after she told him she was having an [REDACTED] affair. According to Person A, Respondent pulled her into the bathroom and urinated on her, twice. He also removed the bathroom door. He left and Person A called 911. When Respondent returned, he and Person A argued again and he left once more. The police were called again.

Respondent agreed that he was arguing with Person A about her revelation of the affair. He had gone out with a friend to cool off and have “a couple.” Respondent testified that when he returned to the home, Person A continued to harangue him. He had to urinate and went into the bathroom. Person A followed and started pulling on his body. He already had started urinating and some of it got onto Person A. Respondent denied restraining Person A or urinating on her purposely. Respondent left the house again to cool off. He returned, but Person B, whom he had a rocky relationship, was there. Respondent left again.

According to the Advocate, the alleged urination is the subject of the first specification, which charges that Respondent “wrongfully was involved in a physical dispute.” Respondent pointed out that in a subsequent more-formal interview with NYPD investigators, Person A backed off her claim that Respondent intentionally urinated on her. She said that it was an accident, that it was more like a little boy missing the toilet.

The Department voiced the opinion that Person A’s allegation in the DIRs of an intentional bodily contact through urination was “sufficient” to prove the charges. It pointed out that Person A had much to lose if Respondent got in trouble with his job, although it did not allege specifically that she lied to investigators to protect him.

In the typical disciplinary case when a witness does not appear and her hearsay statement is admitted into evidence, the Court must decide whether that hearsay is sufficiently credible and reliable under the circumstances. Here, however, there are two competing hearsay accounts. The Department has offered no reason, other than conjecture about Person A’s motives, not to credit her more recent and formal statement to an investigator that the incident was an accident. Her statement to that investigator was reasonable and detailed, and in fact more detailed and subjected to probing than her DIRs. Cf. Case No. 83203/07, p. 41 (Jan. 12, 2009) (complainant’s

initial 911 “cry for help” and statements to Department investigators that accused officer hit her were “too convincing to be negated by her denials during” subsequent “superficial telephone conversations”). Therefore, Respondent is found Not Guilty of Specification No. 1.

The second specification charges Respondent with failing to remain at the scene of an unusual police occurrence. Respondent conceded that Person A said she was going to call 911, though he claimed that he did not think she actually would do so, as there was no need. He left the residence, he testified, because the situation was volatile and he did not want to make it worse.

The cited Patrol Guide procedure, § 212-32 (1), states that members must remain at the scene “when feasible and consistent with personal safety.” When, however, “as here, [REDACTED] [REDACTED] are having a heated disagreement inside their joint residence, a cooling of the emotions can be accomplished, and an escalation of the argument avoided, if one of them disengages from the verbal battle by leaving the residence.” *Cf. Case No. 83670/08*, p. 6 (Nov. 30, 2010). The Court credits Respondent’s testimony that he intended to do this once he and Person A began arguing so vehemently that it led to him urinating on her accidentally. Notably, Respondent is not charged, as he is in Specification No. 3 under the same Patrol Guide procedure, which covers a different incident, with failing to notify the Operations Unit. In fact, Respondent testified that he notified Operations at some point. Respondent is found Not Guilty of Specification No. 2 as charged.

Respondent pleaded Guilty to Specification No. 3. This involved a second incident, approximately one month later, when he returned [REDACTED] and wanted to see his children. He called the police when Person A would not let him see the children, but did not notify the Operations Unit. Having pleaded Guilty, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 1998. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of failing to notify the Department after an unusual police occurrence as required by Patrol Guide § 212-32 (2). [REDACTED]

[REDACTED]

[REDACTED]. Upon his return, Respondent wanted to see his children. His counsel indicated that there was an interim visitation agreement or order in the course of their [REDACTED] litigation. When Respondent went to see the children, however, Person A would not allow it. Respondent called the local police, who responded. Respondent did not, however, notify the NYPD Operations Unit. Counsel indicated that Respondent was unaware of a recent change to the Patrol Guide, which stated that unusual police occurrences, especially domestic incidents, must be reported whether the Department member is the complainant or not.

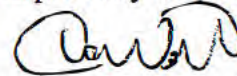
Respondent provided no evidence to support the assertion that the Patrol Guide recently had been amended or clarified to state that the member must report, even if he was the "wronged party." A usual penalty for this failure to notify is 5 vacation days. See, e.g., *Case No. 82951/07*, p. 18 (Aug. 13, 2008); *Case Nos. 78048/02, 79015 & -16/02*, p. 44 (Mar. 14, 2005); *Case No. 77005/01*, p. 10 (May 27, 2002).

Competing considerations in this case, however, include the fact that Respondent was the complainant in this matter. He contacted the police in an effort to gain his rightful visitation, not

to report that Person A had committed a crime against him. He now is faced with the prospect of being penalized for seeking police assistance.

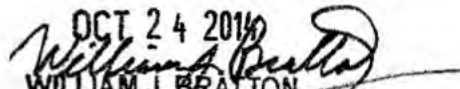
Therefore, and in light of Respondent's otherwise fine record with the Department, the Court recommends that he be reprimanded as a penalty in this case. See Administrative Code § 14-115 (b).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

OCT 24 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

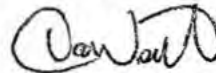
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT BRENDAN CASSIDY
TAX REGISTRY NO. 921204
DISCIPLINARY CASE NO. 2012-8700

Respondent's last three annual evaluations were as follows: he received an overall rating of 3.0 "Competent" in 2013 and a 3.5 "Highly Competent/Competent" in 2012 and 2011. He has two medals for Excellent Police Duty. [REDACTED]
[REDACTED]

[REDACTED] He was placed on Level II Disciplinary Monitoring on November 4, 2013, as a result of the instant case. He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials